



INSTRUCTIONS FOR PREPARING WEST VIRGINIA SURPLUS LINES SURCHARGE RETURNS – FORM XLB-SUR AND XLB-SUR-R

West Virginia Code Section 33-3-33(a) imposes on “the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to one percent of the taxable premium for each such policy.”

West Virginia Code Section 33-3-33(b) further provides that “The policy surcharge shall be collected and remitted to the commissioner by the insurer or in the case of surplus lines coverage, by the surplus lines licensee, or if the policy is issued by a risk retention group, by the risk retention group. The amount required to be collected under this section shall be remitted to the commissioner on a quarterly basis on or before the twenty fifth day of the month succeeding the end of the quarter in which they are collected, except for the fourth quarter for which the surcharge shall be remitted on or before the first day of March of the succeeding year.”

West Virginia Code Section 33-43-2(a) states “The provisions of this article apply to all taxes, surcharges, assessments, penalties and fees, however denominated, which are remitted to the commissioner.”

West Virginia Code Section 33-43-3(i) defines “taxable premium” as “the amount of the gross direct premiums, annuity considerations or dividends on participating policies applied in reduction of premiums less premiums returned to policyholders due to cancellation of policies.”

West Virginia Code Section 33-43-6 states in part: “(a) Any person who is subject to a tax in a given taxable year shall file a return for that tax and that taxable year, **even if the person has no tax liability for that taxable year.** (e) If a tax is to be paid in installments, the taxpayer shall file an appropriate return for each period for which an installment payment is calculated, **even if the taxpayer is not required to make an installment payment for that period.** The

returns shall satisfy all requirements established for annual returns by this section except the filing date for an installment return is the date prescribed for the installment payment for the period described by the return. ...”

Based upon the above provisions and definitions of the West Virginia Code this Office has determined that surplus lines licensees must collect and remit the one percent policyholder surcharge to the Insurance Commissioner. To facilitate remittance this Office has developed Form XLB-SUR and XLB-SUR-R. Surplus lines licensees must use Form XLB-SUR and XLB-SUR-R to remit the surcharge to this Office. **Pursuant to W. Va. Code § 33-43-6(a) and (e) all returns must be filed even if there is no tax liability.**

The surplus lines licensee is required to collect the policyholder surcharge on total direct premiums written on all applicable fire or casualty insurance policies placed by the licensee.

Total direct premiums written are inclusive of any finance and service charges paid by the policyholder and any fire and casualty premiums allocated to West Virginia from Item 5 of the Surplus Lines Tax Allocation Reports for multi-state policies. The surcharge is to be paid by the policyholder and remitted by the surplus lines licensee.

The following is a list of all lines of insurance to which the surcharge is applicable. A licensed insurance company would report these direct premiums written as one of these lines of business on Statutory Page 14 of its annual financial statement. The surplus lines licensee should request assistance from the insurer to determine the line of business being written.



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LINES OF INSURANCE:

1. Fire
- 2.1 Allied lines
- 2.2 Multiple peril crop
- 2.3 Federal flood
3. Farmowners multiple peril
4. Homeowners multiple peril
- 5.1 Commercial multiple peril (non-liability portion)
- 5.2 Commercial multiple peril (liability portion)
6. Mortgage guaranty
11. Medical malpractice
12. Earthquake
16. Workers' compensation
17. Other liability
18. Products liability
- 19.1 Private passenger auto no-fault (personal injury protection)
- 19.2 Other private passenger auto liability
- 19.3 Commercial auto no-fault (personal injury protection)
- 19.4 Other commercial auto liability
- 21.1 Private passenger auto physical damage
- 21.2 Commercial auto physical damage
22. Aircraft (all perils)
26. Burglary and theft
27. Boiler and machinery
33. Aggregate Write-ins*

*(The surcharge is applicable to any fire and casualty premiums aggregated on this line.)

WHEN AND WHERE TO FILE

Form XLB-SUR is due on or before the twenty-fifth day of the month succeeding the end of the first, second and third calendar quarter, i.e.: April 25, July 25, and October 25. Form XLB-SUR-R is used to make the fourth quarter filing and year-end reconciliation due March 1 of the following year.

Returns are to be filed by mailing to:

Tax Audit Section
Offices of the West Virginia
Insurance Commissioner
P. O. Box 50542
Charleston, WV 25305-0542

Or ship to:

Tax Audit Section
Offices of the West Virginia
Insurance Commissioner
1124 Smith Street
Charleston, WV 25301

PAYMENT OF TAX

The balance of surcharge shown to be due on the return must be paid in full with the return. Failure to pay the surcharge on time will subject the taxpayer to assessment of penalties and interest. Make checks payable to the West Virginia Insurance Commissioner. **File returns with no tax liability indicating zero amount due.**

SIGNATURE AND VERIFICATION

All returns must bear the original signature of the surplus lines licensee. Fax copies, rubber stamps, or photocopies of signatures are not considered original signatures.

TAXABLE PERIOD

The taxable periods for Form XLB-SUR are based on calendar year quarters ending March 30, June 30, and September 30. The taxable period for Form XLB-SUR-R is the entire calendar year ending December 31.

FOR INFORMATION AND FORMS

Mail requests for information and forms to:

Tax Audit Section
Offices of the West Virginia
Insurance Commissioner
P. O. Box 50542
Charleston, WV 25305-0542

Forms are also available at:

www.wvinsurance.gov

Fax your request to 304-558-1365 or

To speak with a tax audit representative:

Phone the Financial Conditions Division at:
304-558-2100, ext. 153 or ext. 164.
Monday through Friday 8 a.m. to 5 p.m.



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LINE – BY – LINE INSTRUCTIONS FOR XLB-SUR

Line 1. Gross premiums written this quarter. Enter gross premiums written plus any related finance and service charges. Include any premiums allocated to West Virginia from Item 5 of the Surplus Lines Tax Allocation Reports for multi-state policies.

Line 2. Less premiums returned for cancellation. Enter the dollar amount of premiums returned due to cancellation of policy.

Line 3. Net premiums written this quarter. (Line 1 minus Line 2)

Line 4. Less premiums not subject to 1% surcharge. Enter total amount of premiums not subject to this surcharge. If the policy does not fall under one of the lines of business listed on the previous page, it is not subject to the surcharge.

Line 5. Total premiums subject to 1% surcharge. (Line 3 minus Line 4)

Line 6. Gross surcharge due this quarter. (Line 5 times 1%).

Line 7. Less overpayment applied. If you have an overpayment of surcharge from a previous tax period, you may deduct it on this line. Please include a copy of any letter you have received from this office indicating an overpayment.

Line 8. Net surcharge due this quarter. (Line 6 minus Line 7). **Return must be filed even if there is no tax liability.**

LINE – BY – LINE INSTRUCTIONS FOR XLB-SUR-R

COLUMN 1

Line 1-Column 1. Gross premiums written for first three quarters of reporting year. Enter gross premiums written plus any related finance and service charges. Include any premiums allocated to West Virginia from Item 5 of the Surplus Lines Tax Allocation Reports for multi-state policies. Should equal total of Line 1 of XLB-SUR amounts reported on quarterly returns for year.

Line 2-Column 1. Less premiums returned for cancellation. Enter dollar amount of premiums returned to policyholders because of cancellation during the first three quarters of reporting year. Should equal total of Line 2 of XLB-SUR amounts reported on quarterly returns for year.

Line 3-Column 1. Net premiums written (Line 1-Column 1 minus Line 2-Column 1). Should equal total of Line 3 of XLB-SUR amounts reported on quarterly returns for year.

Line 4-Column 1. Less premiums not subject to 1% surcharge. Enter the dollar amount of premiums written that did not fall under any of the lines of business listed on page 1 of these instructions. Should equal total of Line 4 of XLB-SUR amounts reported on quarterly returns for year.

Line 5-Column 1. Total premiums subject to 1% surcharge. (Line 3-Column 1 minus Line 4-Column 1). Should equal total of Line 5 of XLB-SUR amounts reported on quarterly returns for year.

Line 6-Column 1. Calculated surcharge due for first three quarters of reporting year. (Line 5 - Column 1 times 1%). Should equal total of Line 6 of XLB-SUR amounts reported on quarterly returns for year. This amount should have been remitted with the quarterly returns.

COLUMN 2

Line 1-Column 2. Gross premiums written for fourth quarter of reporting year. Enter gross



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premiums written plus any related finance and service charges. Include any premiums allocated to West Virginia from Item 5 of the Surplus Lines Tax Allocation Reports for multi-state policies.

Line 2-Column 2. Less premiums returned to policyholders because of cancellation of policy. Enter total premiums returned for fourth quarter.

Line 3-Column 2. Net premiums written for the fourth quarter. (Line 1-Column 2 minus Line 2-Column 2).

Line 4-Column 2. Less premiums not subject to 1% surcharge. Enter dollar amount of written premiums that did not fall under any of the lines of business listed on page 1 of these instructions.

Line 5-Column 2. Total premiums subject to 1% surcharge. (Line 3-Column 2 minus Line 4-Column 2).

Line 6-Column 2. Calculated surcharge due for fourth quarter. (Line 5-Column 2 multiplied by 1 percent).

COLUMN 3

Line 1-Column 3. Total gross premiums written for reporting year. Enter gross premiums written plus any related finance and service charges. Include any premiums allocated to West Virginia from Item 5 of the Surplus Lines Tax Allocation Reports for multi-state policies. Should equal sum of Line 1-Column 1 plus Line 1-Column 2. Should also agree with the total of the Gross Premiums Written column reported on the “Annual Report of Written Surplus Line Policies to the West Virginia Insurance Commissioner” (hereinafter referred to as “Annual Report”).

Line 2-Column 3. Less total premiums returned to policyholders because of cancellation of policies this reporting year. Should equal sum of Line 2-Column 1 plus Line 2-Column 2.

Should also agree with the total of the Returned Premiums column reported on the “Annual Report”.

Line 3-Column 3. Net premiums subject to 1% surcharge. (Line 1-Column 3 plus Line 2-Column 3). Should equal sum of Line 3-Column 1 plus Line 3-Column 2. Should also agree with the total of the Net Premiums column reported on the “Annual Report”.

Line 4-Column 3. Less premiums not subject to 1% surcharge. Enter the dollar amount of premiums written that did not fall under any of the lines of business listed on page 1 of these instructions for entire year.

Line 5-Column 3. Total premiums subject to 1% surcharge. (Line 3-Column 3 minus Line 4-Column 3). Should equal sum of Line 5-Column 1 plus Line 5-Column 2.

Line 6-Column 3. Calculated surcharge due for entire reporting year. (Line 5-Column 3 times 1%). Should equal sum of Line 6-Column 1 plus Line 6-Column 2).

RECONCILIATION

Line 1. Gross surcharge due for current calendar year. - Enter amount from Line 6-Column 3. Box is marked with ②.

Line 2. Total surcharge paid for first three quarters. - Enter amount from Line 6-Column 1. Box is marked with ①.

Line 3. Net surcharge due – Line 1 minus line 2.

Line 4. Less overpayment applied. If you have an overpayment of surcharge please enter it in this space. A copy of the overpayment letter received from this office should be included with your return.



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Line 5. Surcharge due with this return. (Line 3 minus Line 4). Please remit this amount with your return. **Return must be filed even if there is no tax liability.**

ALLOCATION OF MULTI-STATE RISKS

West Virginia Code Section 33-12C-7(a) states in part: " ... Where the insurance covers properties, risks, or exposures located or to be performed both in and out of this state, the sum payable shall be computed on that portion of the gross premiums allocated to this state pursuant to subsection (g) of this section less the amount of gross premiums allocated to this state and returned to the insured due to cancellation of the policy. ..."

West Virginia Code Section 33-12C-7(g) and (h) state: "(g) If a surplus lines policy procured through a surplus lines licensee covers properties, risks or exposures only partially located or to be performed in this state, the tax due shall be computed on the portions of the premiums which are attributable to the properties, risks or exposures located or to be performed in this state. In determining the amount of premiums taxable in this state, all premiums written, procured or received in this state shall be considered written on properties, risks or exposures located or to be performed in this state, except premiums which are properly allocated or apportioned and reported as taxable premiums of a reciprocal state. In no event shall the tax payable to this state be less than the tax due pursuant to subsection (h) of this section; provided, however, in the event that the amount of tax due under this provision is less than fifty dollars in any jurisdiction, it shall be payable in the jurisdiction in which the affidavit required in section eleven (W. Va. Code 33-12C-11) is filed. The commissioner may, at least annually furnish to the commissioner of a reciprocal state, as defined in subsection (q), section three of this article, a copy of all filings reporting an allocation of taxes as required by this subsection.

(h) In determining the amount of gross premiums taxable in this state for a placement of surplus lines insurance covering properties, risks or exposures only partially located or to be performed in this state, the tax due shall be computed on the portions of the premiums which are attributable to properties, risks or exposures located or to be performed in this state and which relates to the kinds of insurance being placed as determined by reference to the model allocation schedule and reporting form.

(1) If a policy covers more than one classification:

(A) For any portion of the coverage identified by a classification on the allocation schedule, the tax shall be computed by using the allocation schedule for the corresponding portion of the premium;

(B) For any portion of the coverage not identified by a classification on the allocation schedule, the tax shall be computed by using an alternative equitable method of allocation for the property or risk;

(C) For any portion of the coverage where the premium is indivisible, the tax shall be computed by using the method of allocation which pertains to the classification describing the predominant coverage.

(2) If the information provided by the surplus lines licensee is insufficient to substantiate the method of allocation used by the surplus lines licensee, or if the commissioner determines that the licensee's method is incorrect, the commissioner shall determine the equitable and appropriate amount of tax due to this state as follows:

(A) By use of the allocation schedule where the risk is appropriately identified in the schedule;

(B) Where the allocation schedule does not identify a classification appropriate to the



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coverage, the commissioner may give significant weight to documented evidence of the underwriting bases and other criteria used by the insurer. The commissioner may also consider other available information to the extent sufficient and relevant, including the percentage of the insured's physical assets in this state, the percentage of the insured's sales in this state, the percentage of income or resources derived from this state, and the amount of premium tax paid to another jurisdiction for the policy.”

A Surplus Lines Tax Allocation Schedule and Surplus Lines Tax Allocation Report are included in this tax packet. These items are also available at www.wvinsurance.gov

A surplus lines licensee must complete separate Surplus Lines Tax Allocation Reports for each policy covering properties, risks or exposures only partially located or to be performed in West Virginia. The amount of premium allocated to West Virginia as Item 5 for each report must be included as gross premiums written on Forms LEB-4, LEB-4a, XLB-SUR and XLB-SUR-R. Each policy and the amount of premium allocated to West Virginia also must be reported on the “Annual Report of Written Surplus Lines Policies to the West Virginia Insurance Commissioner”. The surplus lines licensee must file each completed Surplus Lines Tax Allocation Report with the Annual Report of Written Surplus Lines Policies to the West Virginia Insurance Commissioner on or before March 1.

Each surplus lines licensee must complete Item 7 of the Surplus Lines Tax Allocation Report listing each state in which an exposure exists and the corresponding premiums allocated to each state.